

A-6741-continued
Special Permit Request

Modify two (2) structures along either side of a riser and walkway that were installed in the Kirkside Drive public right-of-way.

Mr. and Mrs. Joshua T. Brady
5611 Kirkside Drive

**CHEVY CHASE VILLAGE
BOARD OF MANAGERS
JULY 13, 2015 MEETING**

STAFF INFORMATION REPORT

TO: BOARD OF MANAGERS
FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR
DATE: 7/8/2015
SUBJECT: HEARING OF CASE NO. A-6741 SPECIAL PERMIT REQUEST- CONTINUED
MR. JOSHUA T. BRADY AND MS. MICHELLE S. BRADY; 5611 KIRKSIDE DRIVE
TO MAINTAIN TWO (2) STRUCTURES ALONG EITHER SIDE OF A RISER AND WALKWAY THAT WERE
INSTALLED IN THE KIRKSIDE DRIVE PUBLIC RIGHT-OF-WAY.

NOTICE REQUIREMENTS: Abutting Owners; Public Notice

APPLICABLE CHEVY CHASE BUILDING REGULATION:

The Chevy Chase Village Code Sec. 25-6(a) states:

No structures, fence, wall, lamp post, hand rails, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement, in addition to any required building or special permit. Such agreement may be recorded in the county land records at the abutting property owner's expense. For the purposes of this Section, masonry piers and pillars shall be considered to be walls.

APPLICABLE COVENANTS:

Not applicable; verification of compliance with the property's covenants is not required for Special Permit requests authorized by Sections 8-21 [fences], 8-26 [driveways] or Chapter 25 [Public Rights-of-Way] of the Village Code and because the construction is located within the public right-of-way (Kirkside Drive) and not on private property.

FACTUAL AND BACKGROUND INFORMATION:

This case was continued from the initial hearing held on June 8, 2015 to allow the Applicants to propose modifications to the structures that were installed and to work with Village staff to address concerns expressed by members of the Board regarding pedestrian and vehicular safety.

In response to Board comments regarding pedestrian and vehicular safety in the public right-of-way, Mr. Brady met with the Chief of Police and Director of Municipal Operations at the site. In consultation with them, it was agreed that removing the structures to a distance of twenty-four (24) inches from the outside face of the curb could satisfy their public safety concerns. Their reports immediately follow this staff report (see page 3).

Since the previous hearing, the Applicant submitted (see pages 5-16):

- a revised appeal statement;
- a revised plan;
- photographs indicating the extent of the caps to be removed; and
- photographs of other structures in the public right-of-way throughout the Village.

Note that of the photographs submitted by the Applicants, not all are comparable to this Special Permit request. Specifically 7 Grafton Street; 5512 Montgomery Street; 3 Grafton Street; 5509 Park Street; and 37 West Lenox Street depict step(s) required by grade, which are allowed administratively by the Code- it is the structures adjacent to the steps constructed by the Applicants that are subject to the appeal request. The photograph of 9 Grafton Street depicts cheekwalls associated with the steps (because they slope and are proportional to the rise and run of the steps), which are also allowed administratively. The step constructed by the Applicants can be approved administratively; the structures constructed, which are not sloped nor proportional to the step (so they cannot be considered cheekwalls), are the subject of the Special Permit request.

The Staff Report and Case Synopsis from the previous hearing are on pages 36 and 30, respectively.

To date one email has been received in support of the request (see page 4). No correspondence has been received in opposition to the request.

Applicable Fees: Building Permit Application: \$50; Special Permit Application Fee: \$300. If approved the License to Use the Public Right-of-Way fee will be \$175.

FINDINGS REQUIRED:



1. The proposed Special Permit would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties;
2. The proposed Special Permit can be granted without substantial impairment of the intent and purpose of this chapter; and
3. For all Special Permits, except for Special Permits authorized by Sections 8-21, 8-26 or Chapter 25 of the Village Code, the structure authorized by the proposed Special Permit would not violate any covenant applicable to the property [not applicable in this case].

Draft Motion

I move to APPROVE/DENY the Special Permit request in Case A-6741 on the basis that the evidence presented, including the Staff Report and Case Synopsis, demonstrates that the applicable requirements for approval of the Special Permit HAVE/HAVE NOT been met. Staff is directed to draft a decision based on this evidence, including findings of fact and conclusions, APPROVING/DENYING the Special Permit request.

Memo

To: Board of Managers

From: John M. Fitzgerald, Chief of Police 
Michael Younes, Director of Municipal Operations 

CC: Shana Davis-Cook, Village Manager
Ellen Sands, Permitting and Code Enforcement Coordinator

Date: 7/9/2015

Re: A-6741: 5611 Kirkside Drive – Special Permit Request

As the Board requested during the hearing on the above case held on June 8, 2015, Village staff (Michael Younes, Ellen Sands, and Chief Fitzgerald) met with Mr. Brady of 5611 Kirkside Drive to address the safety concerns generated by the non-permitted changes that Mr. Brady made to his walkway and the structures built along either side of the walkway.

At the meeting, Village staff recommended that the following modification be made to the structures to mitigate the potential hazards to pedestrians and vehicles:

1. Cut the structure back so that it is at least 24" from the front face of the curb. This is the minimum setback required if replacement of the curb is required and to eliminate likely impact by Village snow plows.
2. Slope the structure's side walls so that they are at grade level when they reach to point 24" from the front curb face.

We also feel that the following additional modifications should be made to further reduce the likelihood for potential hazards:

- Soften or bevel the edges of the capstone to help prevent a puncture hazard (this item is optional).

Implementing the above changes would significantly reduce—but perhaps not completely eliminate—the pedestrian trip hazard as well as the risk of punctured vehicle tires or damage to vehicle doors.

CCV Permitting

From: Howard T Anderson [howardtanderson@gmail.com]
Sent: Wednesday, July 08, 2015 12:17 PM
To: CCV Permitting
Subject: Re: 56 11 Kirkside Drive

Dear Ms. Sands, My wife and I live at 5605 Montgomery Street, diagonally across the street from the Josh and Michelle Brady, whose property is the subject of the permitting notice. We walk by their yard nearly every day have no objection to the improvement they have made to the walkway leading to their front door. It enhances the appearance of the property and does not interfere with us in any way. We would be happy to answer any questions. Sincerely, Howard T Anderson

On Tue, Jun 30, 2015 at 1:48 PM, CCV Permitting <ccvpermitting@montgomerycountymd.gov> wrote:

To neighbors of 5611 Kirkside Drive:

You are receiving the attached notice because you are an abutting or confronting property owner to an appeal to the Board of Managers for the above referenced address. In addition to hard copies mailed yesterday, we are now sending notices for upcoming Board appeal requests via email, when possible. Please contact me if you have any questions. Thank you,

Ellen Sands

Permitting and Code Enforcement Coordinator

Chevy Chase Village
Tele. 301-654-7300

FAX 301-907-9721

ccvpermitting@montgomerycountymd.gov

www.chevychasevillagemd.gov



**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 13th day of July, 2015 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6741-continued
MR. JOSHUA T. BRADY &
MS. MICHELLE S. BRADY
5611 KIRKSIDE DRIVE
CHEVY CHASE, MARYLAND 20815**

The applicants seek a Special Permit from the Board of Managers pursuant to Section 8-9 of the Chevy Chase Village Building Code to maintain two (2) structures along either side of a riser and walkway that were installed in the Kirkside Drive public right-of-way.

Sec. 25-6(a) states:

No structures, fence, wall, lamp post, hand rails, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement, in addition to any required building or special permit. Such agreement may be recorded in the county land records at the abutting property owner's expense. For the purposes of this Section, masonry piers and pillars shall be considered to be walls.

Should the request be approved, before any Special Permit will be issued the Applicants must enter into a right-of-way license agreement in a form acceptable to the Village.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed (and emailed where possible) to abutting and confronting property owners on the 30th day of June, 2015.

Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300

**Additional materials
submitted since the prior hearing**

**5611 Kirkside Drive
Special Permit Application**

Additional Submission by Joshua T. Brady

The Proposed Set-Back Would Addresses Public Safety Concerns

On June 18, 2015, I met with Chief Fitzgerald, Mr. Younes, and Ms. Sands at 5611 Kirkside Drive. The purpose of the meeting was to discuss a minimum set-back for the walkway landing walls.

At the meeting, it was determined that a set-back of 24 inches from the outside of the curb (i.e., where the curb meets the street) would not present a danger to vehicular or pedestrian safety. The revised proposal reflects the 24-inch set-back.

The Landing Walls Serve Important Safety Functions

The landing walls serve two important safety functions. First, they act as retaining walls to prevent water, ice, and debris from accumulating on the landing. Ice accumulation from water running off the tree, then freezing at night, was a serious problem in past winters. The landing walls also are steps for lateral entry and egress to and from the yard and the landing.

The revised proposal will preserve the safety functions of the landing walls by allowing the walls to remain at grade with the elevation of the yard, without presenting any safety hazard to vehicles or pedestrians.

The Landing Walls are Consistent with the Intent of the Village Code

The landing walls, like the landing, the walkway, and the steps to house provide safe entry and egress to and from the street and the house.

Furthermore, the landing walls are consistent with architecture of the house and surrounding houses.

The landing walls do not adversely change the character of the property, create unsafe conditions for vehicles or pedestrians, block vistas, materially decrease greenspace, or otherwise adversely effect the neighbor's use and enjoyment of their property.

Proposed:

Flagstone

Grass

Grass

24"

24"

6"

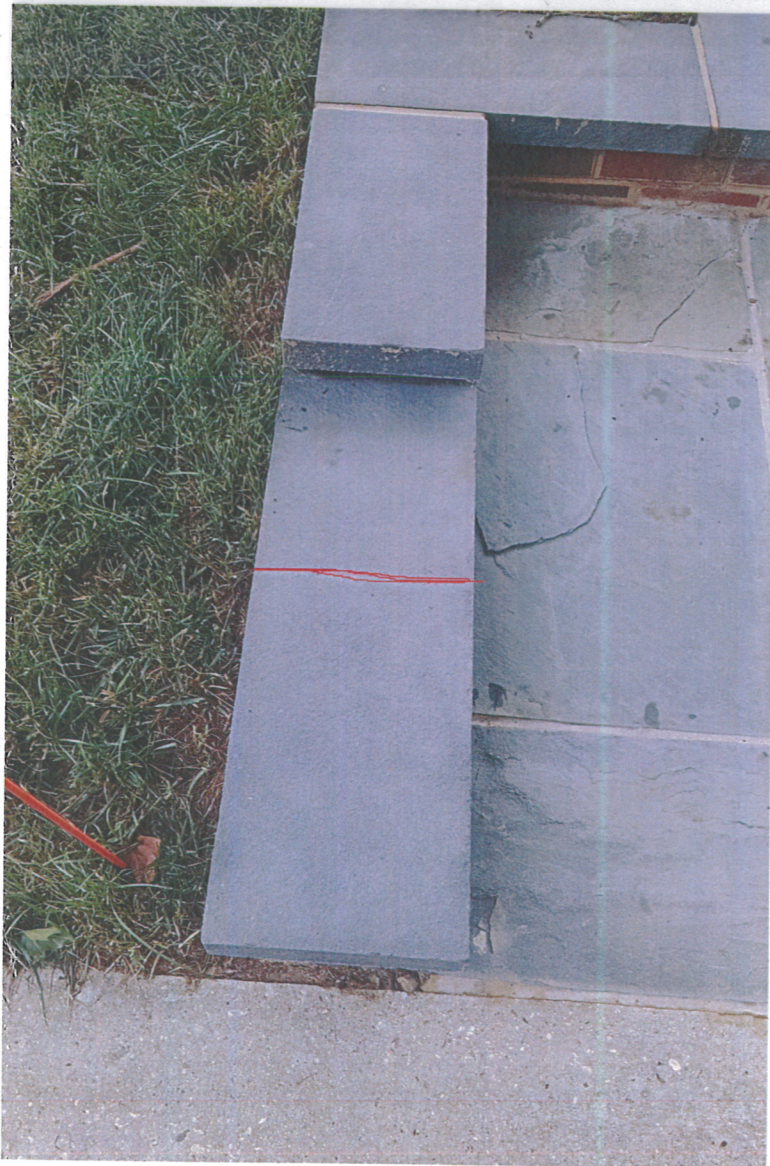
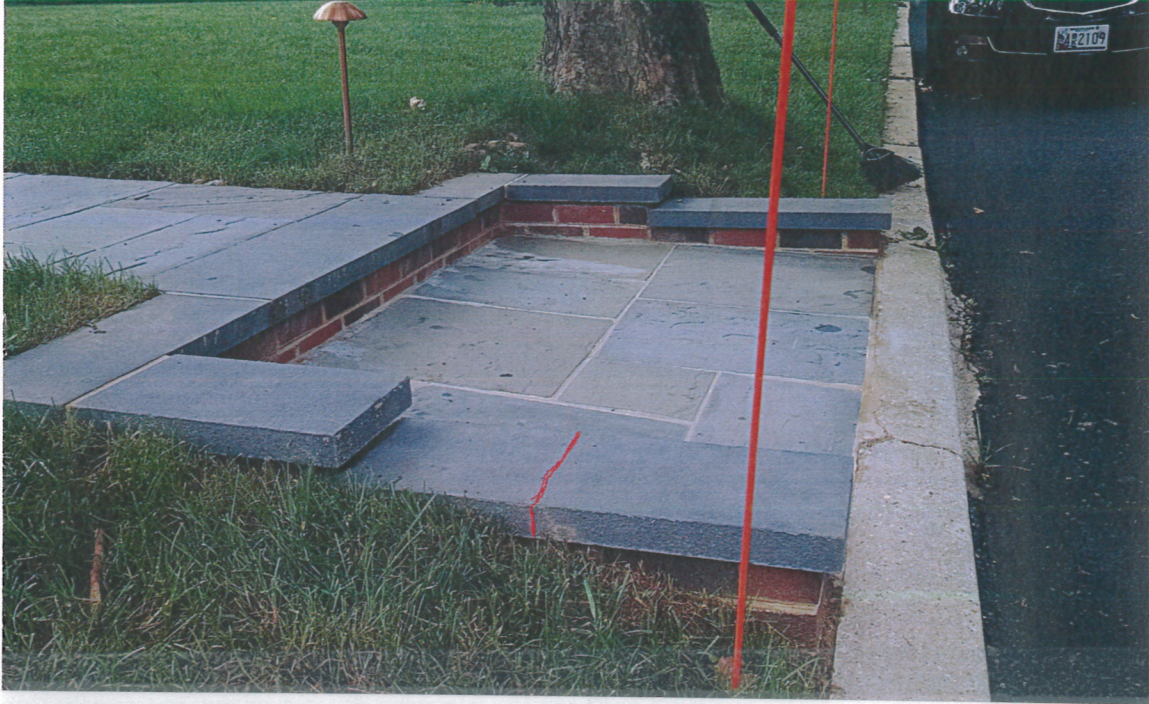
approx
27"

Flagstone

10"

raised
portion
no closer
than 2'
from curb
edge

Curb



(NORTH SIDE)



(SOUTH SIDE)

The Landing Walls are Consistent with Other Structures in the Public Right of Way

The landing and landing walls are consistent with other structures in the public right of way, including:

9 Grafton Street



7 Grafton Street



5512 Montgomery Street



3 Grafton Street



5409 Center Street



5509 Park Street



5505 Center Street



37 West Lenox



Hearing Follow Up



June 9, 2015

Mr. & Mrs. Joshua Brady
5611 Kirkside Drive
Chevy Chase, MD 20815

RE: Special Permit Case No. 6741

Dear Mr. & Mrs. Brady:

As you are aware, during its meeting on June 8, 2015, the Chevy Chase Village Board of Managers considered your Special Permit request to maintain the structures installed in the Kirkside Drive public right-of-way in front of your property. Pursuant to your request, the Board has continued consideration of your case, for consideration at the Board's July 13 regular meeting. Your case was continued to allow you to work with staff to determine an acceptable distance to which the existing structures can be modified so as to eliminate the public safety concerns voiced during the hearing.

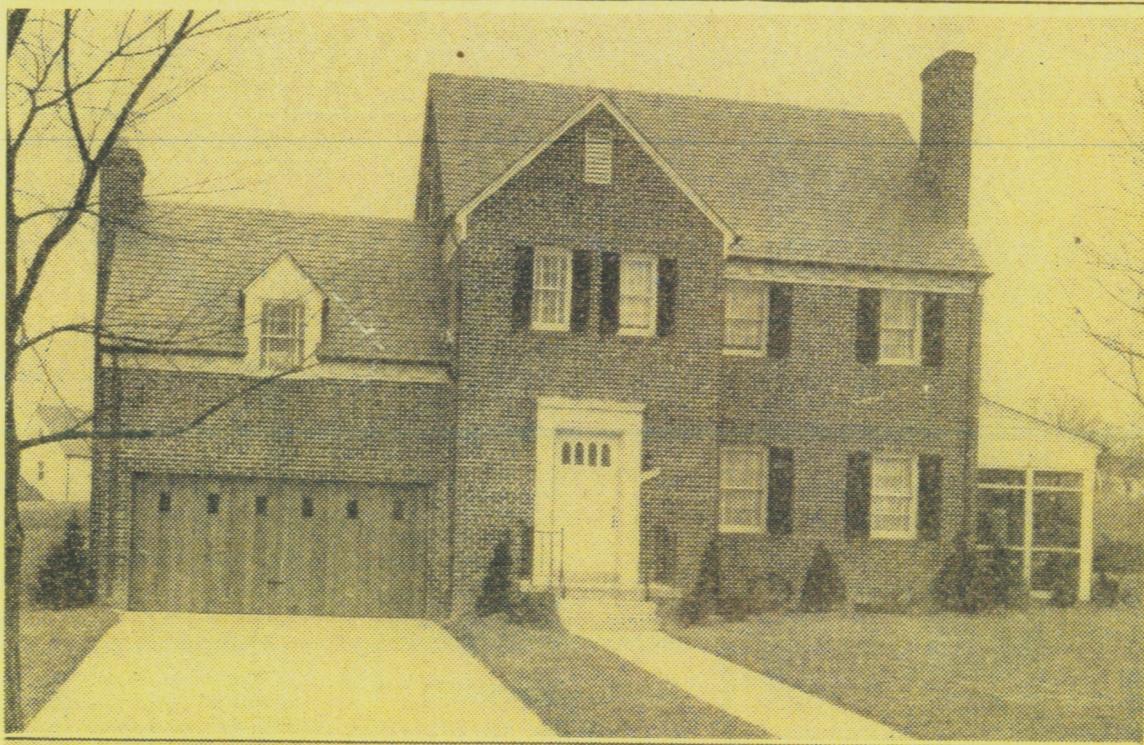
Please contact our office as soon as possible so we can arrange a time to meet and discuss potential options. A revised plan, along with any additional materials you would like to enter into the record, must be finalized and submitted to our office by 5:00 p.m. on June 22, which is the filing deadline for the Board's July 13 meeting agenda. You or a representative must be present at this hearing to present your case. The meeting will begin at 7:30 p.m.

Please contact me directly at (301) 654-7300 or ccvpermitting@montgomerycountymd.gov to schedule a meeting.

Sincerely,

Ellen Sands
Permitting and Code Enforcement
Chevy Chase Village

Support Materials
Presented by the Applicant at the Previous Hearing



CHEVY CHASE HOME—Mr. and Mrs. Ralph L. Warren recently purchased this home at 5611 Kirk-side drive, Chevy Chase, Md., through the office of W. C. & A. N. Miller.



IN LYON VILLAGE—Judson, Va.

Building Permits Valued at \$641,450 Issued This Week

Apartment Houses
Containing Units for

The Home Clinic

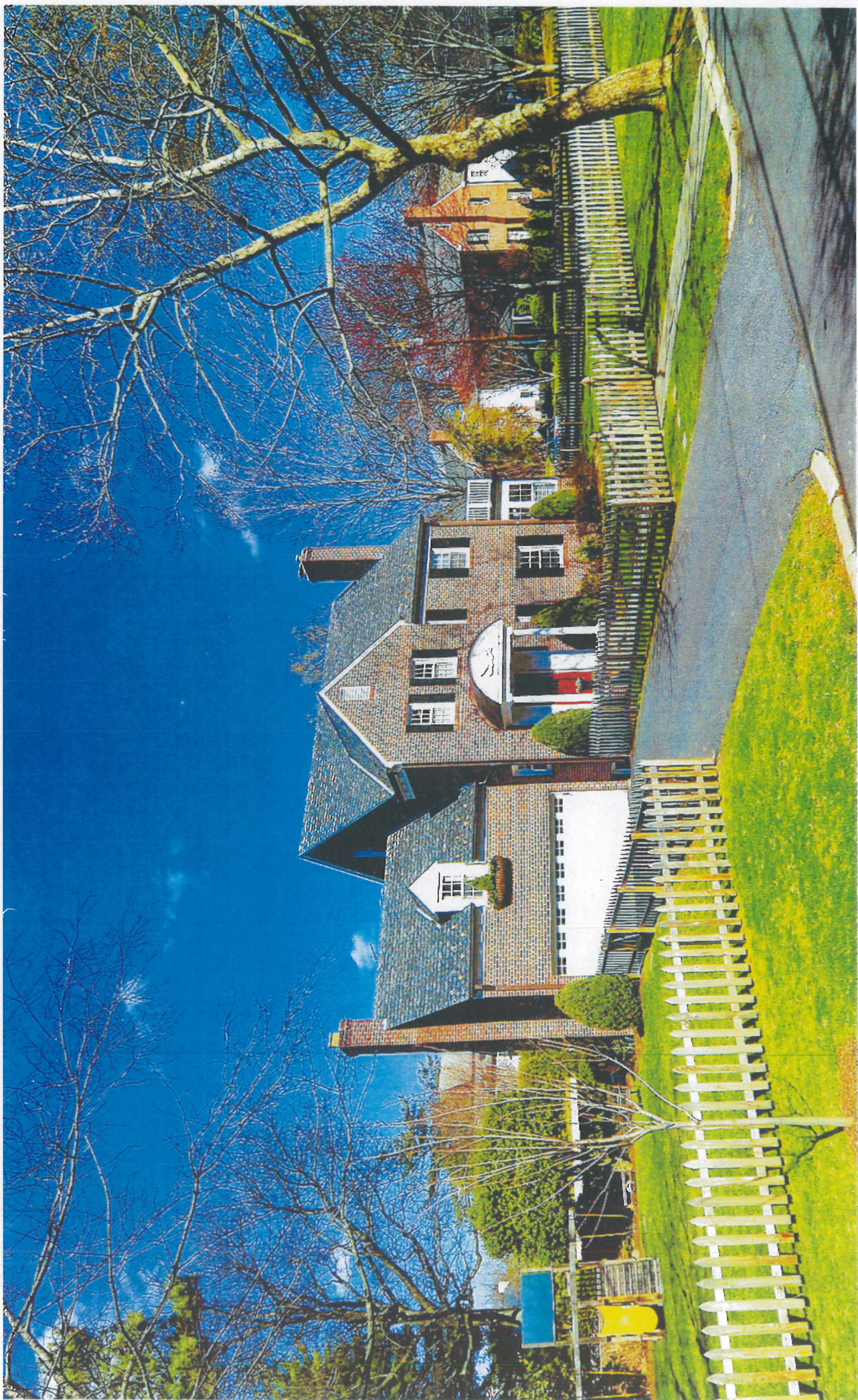
Modern Dressings Protect Woodwork
Against Damage by Heat or Damp

By MARGARET NOWELL.

Most heating methods are very destructive of fine panelling and woodwork, and by the end of the winter the whole house is covered with a thin layer of white dust.

lighter oils, such as lemon oil polish which will achieve the same results without darkening the wood. Rub across the grain, with the oil-soaked cloth for perfect penetra-

**D. C. Home Builders
To Resume Fight to**











Page 6
#9
Grafton
Street

26



Page 7
#37 West Leno



Page 8



Case Synopsis
(presented by Staff at the June 8, 2015 hearing)

**CHEVY CHASE VILLAGE
BOARD OF MANAGERS
JUNE 8, 2015 MEETING**

CASE SYNOPSIS

TO: BOARD OF MANAGERS
FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR
DATE: 6/29/2015
SUBJECT: HEARING OF CASE NO. A-6741 SPECIAL PERMIT REQUEST
MR. JOSHUA T. BRADY AND MS. MICHELLE S. BRADY; 5611 KIRKSIDE DRIVE
TO MAINTAIN TWO (2) STRUCTURES ALONG EITHER SIDE OF A RISER AND WALKWAY THAT WERE
INSTALLED IN THE KIRKSIDE DRIVE PUBLIC RIGHT-OF-WAY.

NOTICE REQUIREMENTS: Abutting Owners; Public Notice

APPLICABLE CHEVY CHASE BUILDING REGULATION:

The Chevy Chase Village Code Sec. 25-6(a) states:

No structures, fence, wall, lamp post, hand rails, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement, in addition to any required building or special permit. Such agreement may be recorded in the county land records at the abutting property owner's expense. For the purposes of this Section, masonry piers and pillars shall be considered to be walls.

APPLICABLE COVENANTS:

Not applicable; verification of compliance with the property's covenants is not required for Special Permit requests authorized by Sections 8-21 [fences], 8-26 [driveways] or Chapter 25 [Public Rights-of-Way] of the Village Code and because the construction is located within the public right-of-way (Kirkside Drive) and not on private property.

FACTUAL AND BACKGROUND INFORMATION:

The Applicants initially obtained a building permit for an in-kind replacement of the walkway. They state that during construction their contractor expanded the walkway's width, added a riser and two structures were constructed along either side of the riser. Because it was an expansion of an existing walkway and was within the public right-of-way, the work required a permit that accurately reflected the proposed work and execution of a License to Use the Public Right-of-Way.



Figure 1: The walkway prior to expansion.

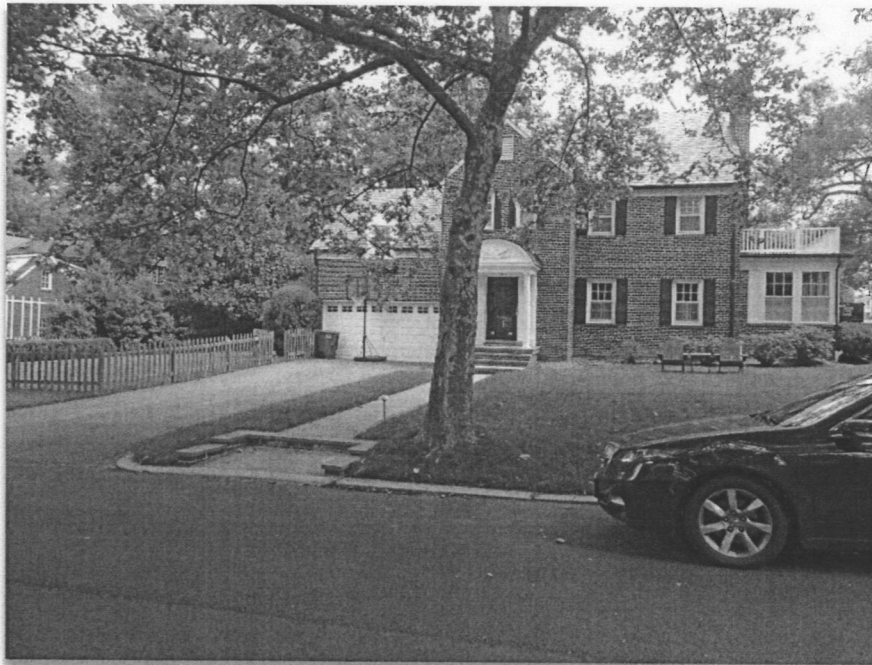


Figure 2: The walkway after expansion showing the two structures alongside the new riser and walkway.

To clarify for permitting purposes, the constructions are considered as a “structure”- they are less than the height defined by the Village Code as a “wall” (12”) and as they are not directly proportional and associated with the riser adjacent to the step, they do not satisfy the definition of “cheekwalls”.

Related definitions per the Village Code Sec. 8-1. Definitions:

Wall: An architecturally solid construction of stone, brick or other material, greater than twelve (12) inches in height, and intended for the purposes of privacy, security, enclosure, or to hold back earth.

Cheek wall: A retaining wall immediately adjacent to steps that is in reasonable proportion to the rise and run of the steps.

Structure: An assembly of materials forming a construction including, but not limited to, buildings, accessory buildings, open sheds, shelters, tennis courts, antennae, air conditioners, generators, heat pumps, swimming pools, therapeutic baths and permanently anchored play equipment, but not including walkways, patios, or driveways.

Walkway: An improved surface greater than twenty (20) square feet in total area constructed on a base and intended for private use by pedestrians.

The applicants were presented by the Village Manager with two options to pursue:

1. remove the lower two pieces of stone cap and slope the remaining two pieces down, so they could be considered cheekwalls associated with the step; or
2. file an appeal to maintain them as constructed, which the applicants elected to pursue and which is why they are here tonight.

The Arborist was unable to determine the full extent of the impacts to the tree's root system, he concluded that major roots had not been cut, thereby limiting an adverse impact to the tree.

This construction places a structure in the right of way, which was evaluated with respect to interference with pedestrian or vehicular traffic.

Per Sec. 25-6(e):

(e) No structures, fence, wall, lamp post, hand rail, tree, hedge or shrubbery or any other growth located on public property devoted to private use by an abutting owner or occupant shall be permitted to extend into any public sidewalk, street, or alley so as to interfere in any manner with pedestrians or vehicular traffic.

Michael Younes, Director of Municipal Operations, and Chief Fitzgerald have assessed the structures; see pages 21 and 22 of the application materials for their comments.

To date no letters have been received either in support of or in opposition to the request.

The Applicant Mr. Brady is here and available to answer questions and my case synopsis is submitted for the record as well.

Previous Application Materials

A-6741
Special Permit Request

Maintain two (2) structures along either side of a riser and walkway that were installed in the Kirkside Drive public right-of-way.

Mr. and Mrs. Joshua T. Brady
5611 Kirkside Drive

CHEVY CHASE VILLAGE
BOARD OF MANAGERS
JUNE 8, 2015 MEETING

STAFF INFORMATION REPORT

TO: BOARD OF MANAGERS
FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR
DATE: 6/4/2015
SUBJECT: HEARING OF CASE NO. A-6741 SPECIAL PERMIT REQUEST
MR. JOSHUA T. BRADY AND MS. MICHELLE S. BRADY; 5611 KIRKSIDE DRIVE
TO MAINTAIN TWO (2) STRUCTURES ALONG EITHER SIDE OF A RISER AND WALKWAY THAT WERE
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APPLICABLE COVENANTS:

Not applicable; verification of compliance with the property's covenants is not required for Special Permit requests authorized by Sections 8-21 [fences], 8-26 [driveways] or Chapter 25 [Public Rights-of-Way] of the Village Code and because the construction is located within the public right-of-way (Kirkside Drive) and not on private property.

FACTUAL AND BACKGROUND INFORMATION:

The Property is located on the northeast corner of Kirkside Drive and Montgomery Street. The walkway is located in the Kirkside Drive public right-of-way.

The Applicants obtained an administratively-issued Building Permit for the in-kind replacement of the front steps and walkway in the same location on October 31, 2014; see page 17 of the application materials.

During the construction, the Applicants' contractor expanded the walkway's width, a riser was added, and two structures were constructed along either side of the riser and walkway all within the public right-of-way. This work was performed without obtaining the applicable permit or execution of a License to Use the Public Right-of-Way.

Pursuant to Sec. 25-5(c) ("Public Rights-of-Way") of the Village Code, structures located within a public right-of-way require a Chevy Chase Village Special Permit, in addition to a License to Use the Public Right-of-Way (only a Building Permit is required for in-kind walkway replacements)¹.



Figure 1: The walkway prior to expansion.



Figure 2: The walkway after expansion showing the two structures alongside the new riser and walkway.

¹ Subsequent to their filing of this Special Permit Request, the Applicants also installed a hard-wired, freestanding light (visible in Figure 2) in the public right-of-way without having obtained the required Building Permit and license. The Applicants have been advised that said documents must be executed in order to maintain the light.

The Building Code establishes a minimum height of twelve (12) inches as the point at which an assembly of materials constitutes a "wall". This was meant to exclude lower assemblies of materials, frequently stone or timber (used primarily in landscaping) from being defined as and subject to the restrictions for "walls". The construction built along either side of the Applicants' walkway is less than twelve (12) inches in height.

A "cheekwall" is defined as a wall(s) accompanying a set of steps (see below). The construction built along either side of the Applicants' walkway is not proportional to the rise of the step and extends far beyond the single riser.

The Village Manager has found that the construction built in the Kirkside Drive public right-of-way meets neither definition, and has determined that what was built are "structures", pursuant to the below definition.

Related definitions per the Village Code Sec. 8-1. Definitions:

Wall: An architecturally solid construction of stone, brick or other material, greater than twelve (12) inches in height, and intended for the purposes of privacy, security, enclosure, or to hold back earth.

Cheek wall: A retaining wall immediately adjacent to steps that is in reasonable proportion to the rise and run of the steps.

Structure: An assembly of materials forming a construction including, but not limited to, buildings, accessory buildings, open sheds, shelters, tennis courts, antennae, air conditioners, generators, heat pumps, swimming pools, therapeutic baths and permanently anchored play equipment, but not including walkways, patios, or driveways.

Walkway: An improved surface greater than twenty (20) square feet in total area constructed on a base and intended for private use by pedestrians.

When it was observed that the walkway had been expanded in the vicinity of a large Village tree, the Village consulting Arborist was directed to assess the tree for potential impacts. Although the Arborist was unable to determine the full extent of the impacts to the tree's root system, he concluded that major roots had not been cut, thereby limiting an adverse impact to the tree.

This construction places a structure in the right of way, which was evaluated with respect to interference with pedestrian or vehicular traffic.

Per Sec. 25-6(e):

(e) No structures, fence, wall, lamp post, hand rail, tree, hedge or shrubbery or any other growth located on public property devoted to private use by an abutting owner or occupant shall be permitted to extend into any public sidewalk, street, or alley so as to interfere in any manner with pedestrians or vehicular traffic.

Michael Younes, Director of Municipal Operations, and Chief Fitzgerald have assessed the structures; see pages 15 and 16 of the application materials for their comments.

To date no letters have been received either in support of or in opposition to the request.

Applicable Fees: Building Permit Application: \$50; Special Permit Application Fee: \$300. If approved the License to Use the Public Right-of-Way fee will be \$175.

RELEVANT PRIOR CASES:

Note: Prior to 1999, *any* structure in the public right-of-way required approval from the Board of Managers. Subsequent to that, most special permit requests were regarding the height, or location in proximity to the public sidewalk, of structures, fences, walls etc. Staff was able to locate two prior appeals for maintenance of a structure (in both cases, lampposts) that were installed without the applicable permit and license having been issued. In July 2011 Christopher Erckert and Christopher Sperl of 28 Hesketh Street were granted a special permit to **maintain** a gas lamp post that had been installed in the Hesketh Street public right-of-way. In March 2013 Mr. & Mrs. Robert Maruszewski of 127 Grafton Street were granted permission to **maintain** a lamppost that was installed in the Grafton Street public right-of-way. The location of the lampposts was compliant with Village Code. Other relevant cases for installation of structures in the public right-of-way include:

On November 23, 1993, Mr. & Mrs. Karl Corby of 2 West Newlands Street received approval to **construct** two stone pillars in the West Newlands Street public right-of-way. In 1993, Mr. & Mrs. John Murphy of 6 Newlands Street received approval to **extend** a retaining wall from the private property into the Newlands Street public right-of-way, terminating three feet, ten inches (3'-10") from the public sidewalk. In 1996 Mr. Daniel Lynn Korengold and Ms. Martha Lyn Dippell of 101 East Melrose Street were granted a special permit to **replace** the original electric lights on the tip of two stone piers in the East Melrose Street right-of-way with two new gas lighted lamps and to **install** plantings and for the **maintenance** of a wall measuring ten inches in height and sixty feet in length. On January 20, 1998, Mr. & Mrs. William Clinton, of East Melrose Street received approval to **construct** a stone wall measuring three feet in height that encroached six feet into the East Melrose Street public right-of-way. On June 8, 1998 Mr. and Mrs. George Keeler were granted a special permit to **construct** a stone wall measuring eight inches in height in the Oxford Street public right-of-way.

Subsequent to the revision to the Code regarding structures in the public right-of-way, in 2004 Mr. & Mrs. Clarke Camper of 6 Primrose Street were granted special permits to **extend** a retaining wall alongside the public sidewalk in front of their property and to **install** a 7-foot high gas lamp post in the Primrose Street right-of-way. In 2004 Mr. & Mrs. Thomas G. Schendt were granted permission to **install** two lamp posts in the Grafton Street public right-of-way adjacent to a walkway leading from the public sidewalk to the applicants' front door. On July 14, 2008 Mr. Thad S. Kemp was granted a request to **construct** stone piers in the Oliver Street public right-of-way. On July 31, 2010 Mr. and Mrs. Antonio Adelfio were granted a special permit to **reconstruct** three stone pillars measuring four feet in height and located eight inches from the proposed Brookville Road public sidewalk. On December 12, 2011, Mr. & Mrs. Stewart Bainum of 12 Primrose Street were granted a request to **install** a pair of handrails, each measuring nine (9) feet in length, on either side of the front steps located in the Primrose Street public right-of-way. In December of 2011 Mr. & Mrs. Peter Keisler were granted a special permit to **install** a lamp post in the Magnolia Parkway public right-of-way. In January 2012, Mr. & Mrs. Peter Keisler of 20 Magnolia Parkway were granted permission to **install** a handrail alongside a private walkway in the Magnolia parkway public right-of-way. In February 2012 Mr. & Mrs. Andrew Marino of 11 Primrose Street were granted permission to **install** a lamp post in the Primrose Street public right-of-way. In June 2012 Mr. & Mrs. Jeffrey Shuren of 108 Hesketh Street were granted permission to **construct** a new pair of cheekwalls alongside reconstructed steps in the Hesketh Street public right-of-way. The walls terminate twelve (12) inches from the public sidewalk. In February 2013 Mr. and Mrs. Alex Sternhell of 27 Primrose Street were granted permission to construct a new pair of cheekwalls alongside new steps in the Primrose Street public right-of-way which terminate twelve (12) inches from the public sidewalk.

FINDINGS REQUIRED:

1. The proposed Special Permit would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties;
2. The proposed Special Permit can be granted without substantial impairment of the intent and purpose of this chapter; and
3. For all Special Permits, except for Special Permits authorized by Sections 8-21, 8-26 or Chapter 25 of the Village Code, the structure authorized by the proposed Special Permit would not violate any covenant applicable to the property [not applicable in this case].

Draft Motion

I move to APPROVE/DENY the Special Permit request in Case A-6741 on the basis that the evidence presented, including the Staff Report and Case Synopsis, demonstrates that the applicable requirements for approval of the Special Permit HAVE/HAVE NOT been met. Staff is directed to draft a decision based on this evidence, including findings of fact and conclusions, APPROVING/DENYING the Special Permit request.

Previous Enforcement Correspondence

June 8, 2015 Board Meeting

(4)

~~7~~

previous

CHEVY CHASE VILLAGE

ESTABLISHED 1890

May 5, 2015

Mr. Joshua Brady
5611 Kirkside Drive
Chevy Chase, MD 20815

RE: Village Code Violation

Dear Mr. Brady:

The Village Manager and I met with you on March 4, 2015 regarding the construction in the Kirkside Drive public right-of-way abutting your property. As you know, the Village was originally informed in October, 2014, that there would be no change to the front stoop and steps or the walkway at this property, as only maintenance work was planned. As a result, no permit was required. On October 21, 2014, it was determined that you had removed the stoop, steps and walkway. This work requires a building permit from the Village. You applied for and were issued a permit, which specifically described the work to be done. Part of that work was to replace the walkway "in the same footprint". The footprint described would match the photograph included as Attachment A to this letter.

We have now determined, as a result of the March 4 meeting, that you have expanded the walkway in the Village right of way beyond the original footprint both in width and height and have included a step. A photograph of the new configuration is included as Attachment B to this letter. The changes to the walkway were not authorized in the permit. Pursuant to Sec. 8-6 of the Village Code, set out below, a permit may not be changed without approval by the Village Manager.

Sec. 8-6. Building Permit issuance and conditions.

(d) Modification of approved plans. No person or persons shall erase, modify or alter any plans or specifications after they have been approved and a permit issued thereon. If during the progress of work it is desired to deviate materially from the approved plans or specifications, notice of such intent shall be given in writing to the Village Manager, and his/her written approval shall be obtained before such amendment is made. No person or persons shall proceed with any activity requiring a Village Building Permit except in accordance with the approved plans and specifications, and any amendments approved by the Village Manager.

CHEVY CHASE VILLAGE

5906 Connecticut Avenue
Chevy Chase, Maryland 20815

Phone (301) 654-7300

Fax (301) 907-9721

ccv@montgomerycountymd.gov
www.chevychasevillagemd.gov

BOARD OF MANAGERS

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SHANA R. DAVIS-COOK

LEGAL COUNSEL
SUELLEN M. FERGUSON

Further, the expansion of the walkway in the right of way also requires a license agreement pursuant to Village per Sec. 25-5, which states as follows:

Sec. 25-5. Driveways and walkways crossing public right-of-way.

(e) In addition to the requirement in Sec. 8-5 for a Building Permit, a written revocable license to use the public right-of-way and a right-of-way license agreement signed by the owner shall be required for the installation of any private walkway within the public right-of-way. **The Building Officer and the Village Manager may issue a written license to use the public right-of-way upon such terms and conditions as the Building Officer and the Village Manager deem appropriate to protect the current and future use of the public right-of-way by the public, and governmental and utility entities. (Emphasis added).**

In addition to the applicable Building Permit and License Agreement, having reviewed the construction that was installed, the Village Manager advised you that a portion of what was constructed creates a hazard and that modifications must be made to eliminate the hazard. The Manager determined that the two dividers installed perpendicular to the street, on either side of the expanded walkway, must be removed because they are an obstruction in the abutting roadway. The upper two sections of divider, if they are modified to slope down to the landing proportional to the slope of the step, may be maintained.

At this point, two violations have occurred. The first violation is that the construction is not in keeping with the approved plan issued for replacement of the previous walkway (Sec. 8-6). The second violation is that you have not obtained a license (Sec. 25-5).

To come into compliance, you must submit a Building Permit Application for Projects in the Public Right-of-Way (enclosed). Upon receipt of the completed application, staff will prepare the License to Use the Public Right-of-Way, with the restrictions noted above, which must be signed and notarized by all parties, following which a permit will be issued. The Village Manager will condition the permit on completion of the work within thirty (30) days of the date of issuance.

If we have not received the Building Permit Application, filing fee and plan(s) within ten (10) days of the date of this letter, we will proceed with enforcement action, which can include issuance of a municipal infraction and fine..

Sincerely,



Ellen Sands

Permitting & Code Enforcement Coordinator

Chevy Chase Village

Email: ccvpermitting@montgomerycountymd.gov

Enclosure

43

9

memo



May 14, 2015

Mr. Joshua Brady
5611 Kirkside Drive
Chevy Chase, MD 20815

*Scanned &
emailed
5/14*

Re: 5611 Kirkside Drive and Adjacent Public Right-of-Way

Mr. Brady:

We are in receipt of your letter dated May 11, 2015 stating your intent to file an appeal pursuant to Sec. 25-6(g)(2) of the Village Code. This Code section, however, is not applicable in this case. Sec. 25-6(g)(2) of the Village Code refers to appeals pertaining to the revocation of a license to use the public right-of-way. As you know, the Village has not issued a license for the construction. My letter of May 5, 2015 referenced the fact that you could apply for a license, and submit a Building Permit Application for Projects in the Public Right-of-Way, if the modification suggested in the May 5 letter was acceptable. To date you have not filed for a license. As a result, there is no revocation of a license to appeal.

If it is your intention to appeal the Manager's decision that the built construction does not meet the Code's requirements for a Building Permit, you would file your appeal pursuant to Village Code Sections 8-10(a) and 25-11(c), which state:

Sec. 8-10. Review procedures.

(a) Filing of appeals. Any person aggrieved by a decision or action of the Village Manager arising from the granting or denial of a Building Permit may file a de novo appeal to the Board of Managers. Such appeal shall be filed within (30) days after issuance of the decision by the Village Manager. The Village Manager shall transmit to the Board of Managers all documents and papers pertaining to the appeal which shall constitute the record on appeal.

Sec. 25-11. Remedial action and stop work order.

(c) If any person shall fail or refuse to abate any condition prohibited by this Chapter within fifteen (15) days from the notification of violation, such condition may be abated by the Village, and the cost of such work and the damages resulting therefrom shall be paid by such person upon request of the Village. Within ten (10) days of notification, such person may in writing request a review by the Board of Managers of whether the notice of violation was properly issued. The cost of abatement for a violation of this Section shall be a lien upon the abutting property to be collected in the same manner as Village taxes are collected. Abatement by the Village is in addition to any other remedies available under law.

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Assistant Treasurer

ELISSA A. LEONARD
Board Member

VILLAGE MANAGER
SHANA R. DAVIS-COOK

LEGAL COUNSEL
SUELLEN M. FERGUSON

421
10
mian

If you wish to file an appeal pursuant to the above-referenced sections, please submit a letter addressed to the Village Board of Managers outlining the basis of your appeal along with any other documentation you would like to submit in support of your case. We will accept your May 11 letter as sufficient to meet the filing deadline.

If you do not wish to modify the construction as previously suggested in my May 5 letter, which would require a standard Building Permit and license approved by the Village Manager and Building Officer, you can apply for a Special Permit and license to maintain what you have constructed, which is a structure. This application is made pursuant to Sec. 25-6 of the Village Code, which states:

Sec. 25-6. Structures, fences, walls, lamp posts, hand rails, trees, hedges and shrubbery in public right-of way.

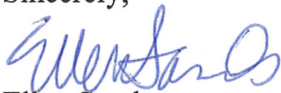
(a) No structures, fence, wall, lamp post, hand rails, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement, in addition to any required building or special permit. Such agreement may be recorded in the county land records at the abutting property owner's expense. For the purposes of this Section, masonry piers and pillars shall be considered to be walls.

The request for a Special Permit is determined directly by the Board. In order to apply for a Special Permit, you must submit a Building Permit Application for Projects in the Public Right-of-Way, a Special Permit Application, a \$300 filing fee, a plat diagram along with a dimensioned drawing of the construction and any other documentation you would like to submit in support of your request.

To meet the deadline for consideration of your appeal under Secs. 8-10 and 25-11(c), or a Special Permit request, by the Board of Managers at its June 8 meeting, you must file the requested documentation by 5:00 p.m. on Monday, May 18. All of the documents referenced in this letter, along with Chapters 8 and 25 of the Village Code, are enclosed for your reference.

Feel free to call if you would prefer to walk this through on the telephone, and contact me should you have any questions or need additional information.

Sincerely,



Ellen Sands

Permitting & Code Enforcement Coordinator
Chevy Chase Village

Att. Building Permit Application for Projects in the Public Right-of-Way
Special Permit Application
Chapter 8 of the Village Code
Chapter 25 of the Village Code
Website Posting Notice

45

11
minutes

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 8th day of June, 2015 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-6741
MR. JOSHUA T. BRADY &
MS. MICHELLE S. BRADY
5611 KIRKSIDE DRIVE
CHEVY CHASE, MARYLAND 20815**

The applicants seek a Special Permit from the Board of Managers pursuant to Section 8-9 of the Chevy Chase Village Building Code to maintain two (2) structures along either side of a riser and walkway that were installed in the Kirkside Drive public right-of-way.

Sec. 25-6(a) states:

No structures, fence, wall, lamp post, hand rails, tree, hedge or shrubbery or any other growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use without the property owner first having obtained a license and having signed a right-of-way license agreement, in addition to any required building or special permit. Such agreement may be recorded in the county land records at the abutting property owner's expense. For the purposes of this Section, masonry piers and pillars shall be considered to be walls.

Should the request be approved, before any Special Permit will be issued the Applicants must enter into a right-of-way license agreement in a form acceptable to the Village.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed (and emailed where possible) to abutting and confronting property owners on the 28th day of May, 2015.

Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300

Chevy Chase Village
Building Permit Application for Projects in the
Public Right-Of-Way

Permit No: 6747

Property Address: <u>5611 Kirkside Dr.</u>	
Resident Name: <u>Joshua and Michelle Brady</u>	
Daytime telephone: <u>(301) 651-3208</u>	Cell phone:
After-hours telephone:	
E-mail: <u>joshua.f.brady@gmail.com</u>	
Project Description: <u>Maintain installation of walking landing</u>	
Primary Contact for Project: <input checked="" type="checkbox"/> Resident <input type="checkbox"/> Architect <input type="checkbox"/> Project Manager <input type="checkbox"/> Contractor* *MHIC/MD Contractor's License No. (required):	
Information for Primary Contact for Project (if different from property owner): Name: Work telephone: After-hours telephone: Cell phone: E-mail:	
Parking Compliance: Is adequate on-site parking available for the construction crews? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, please attach a parking plan which minimizes inconvenience to neighboring residents, and indicate if the property is in a permit parking area. Will road closings be required due to deliveries, equipment or other reasons? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

For Use By Village Building Officer & Village Manager	Application approved with the following conditions:
<div style="display: flex; align-items: center;"> <div style="border: 2px solid black; padding: 5px; margin-right: 10px;"> DELETED MAY 21 2015 Chevy Chase Village Manager </div> <div> For Use By Village Building Officer & Village Manager </div> </div>	Application denied for the following reasons:
	<i>Denial</i> Construction requires a Special Permit from the Board of Managers.

Filing Fees (due when application submitted)	Checks Payable to: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
Permit Application Fee: <input checked="" type="checkbox"/> \$50.00 Construction on the R.O.W. <input type="checkbox"/> \$30.00 Planting on the R.O.W. <input type="checkbox"/> \$350.00 R.O.W. Use Agreement <input type="checkbox"/> \$175.00 R.O.W. Use Agreement for in-kind replacement of an existing non-conformity in the same location. <input type="checkbox"/> \$175.00 R.O.W. Use Agreement for which recordation in the County Land records is waived.	
Tree Preservation Plan Fee: <input type="checkbox"/> \$250.00 <input type="checkbox"/> Not required for this project.	
TOTAL Fees:	
	Date: Staff Signature:
Damage Deposit/Performance Bond (due when permit is issued)	Checks Payable to: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager	Date: Village Manager Signature:
Cost of damage to R-O-W: (calculated at close-out) Amount of refund:	Date: Village Manager Signature:

Chevy Chase Village

Application for a Special Permit

Chevy Chase Village Code Section 8-1 defines a Special Permit as permission granted by the Board of Managers in accordance with Article II Division B of this Chapter [8], to construct, install, remove or alter a structure or planting, or take other action where such permission is required by this Chapter.

Subject Property:	5611 Kirkside Drive	
Describe the Proposed Project:	Maintain installation of walkway leading ad street	
Applicant Name(s) (List all property owners):	Joshua + Michelle Brady	
Daytime telephone:	(301) 651-3208	Cell:
E-mail:	joshua.brady@gmail.com	
Address (if different from property address):		
For Village staff use:		
Date this form received:	5/18/15	Special Permit No: A-6741

Filing Requirements:

Applications will be reviewed for satisfaction of all requirements and are not considered complete until approved as such by staff.

- ☐ Completed Chevy Chase Village Application for a Special Permit (this form)
- ☐ Completed Chevy Chase Village Building Permit Application
- ☐ Completed Chevy Chase Village Website Posting Notice
- ☐ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces.
- ☐ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☐ Copy of Covenants, except for Special Permits authorized by Sections 8-21 and 8-26 of Chapter 8, or Section 25-5 and 25-6 of Chapter 25 of the Chevy Chase Village Code.
- ☐ Applicable Special Permit fee listed in Chapter 6 of the Village Code.

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this special permit request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: _____

Date: May 18, 2015

Applicant's Signature: _____

Date: 5/18/15

Describe the basis for the Special Permit request (Applicants should become familiar with the pertinent sections of the Village Code. Attach additional pages as needed):

Describe the reasons why approval of the Special Permit would not adversely affect the public health, safety or welfare or the reasonable use of adjoining properties:

The walkway landing does not adversely affect the adjoining properties. It is very small visually and is consistent with the architecture of the subject property and adjoining houses.

Describe the reasons why the Special Permit can be granted without substantial impairment of the intent and purpose of Chapter 8, entitled *Buildings and Building Regulations*, or Chapter 25, entitled *Public Rights-of-Way* of the Chevy Chase Village Code

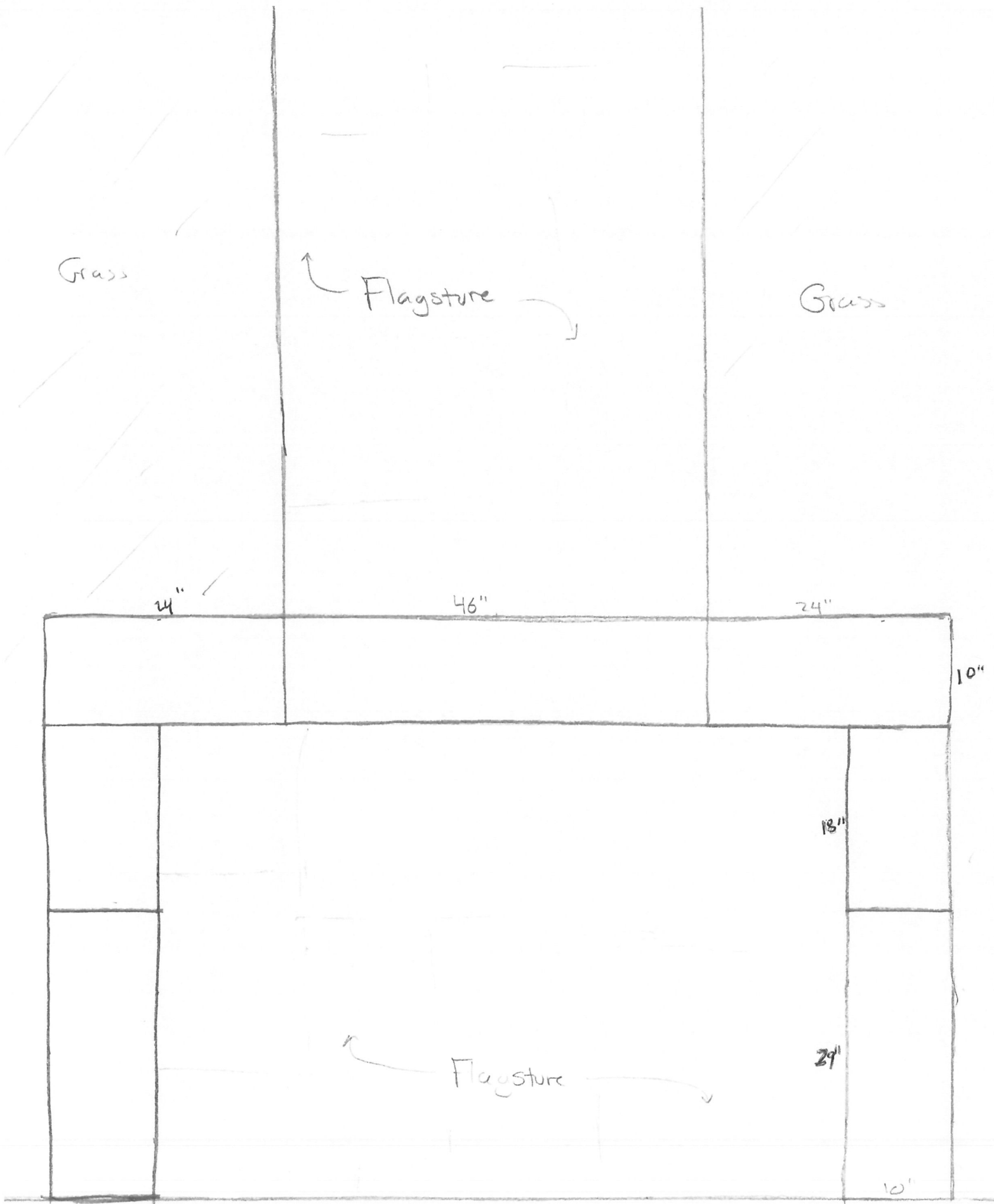
The walkway follows the path originally installed when house was built. The abutments at the end on the landing account for the grade of the land as it meets the street and the root system of the tree. See photos.

In exercising its powers in connection with a Special Permit request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

Special Permit Filing Fees	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<i>Per Village Code Sec. 6-2(a)(24):</i> <input checked="" type="checkbox"/> \$300.00 for new construction. <input type="checkbox"/> \$150.00 for replacing existing non-conformities. <input type="checkbox"/> \$2,250.00 for demolition of main building. <input type="checkbox"/> \$300.00 for demolition of accessory building or structure. <input checked="" type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way. Fee Paid: \$300	Date Paid: 5/20/15 Staff Signature: [Signature]
	Approved to Issue Building Permit per Board Decision Signed by the Board Secretary. Signature: _____ Village Manager Date: _____

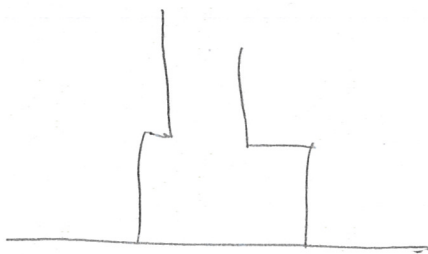
50

15



16
previous

1 inch = 1 foot (5)



52

20

CCV Permitting

From: Younes, Michael
Sent: Tuesday, May 26, 2015 3:40 PM
To: CCV Permitting
Subject: RE: 5611 Kirkside

Ellen,

I looked at the walls located in the right-of-way and provide the following:

1. I am concerned that they are set so close to the roadway, during snow plowing operations it is common for the snow plow blade to jump the curb or scrap the top of the curb. The flagstone caps on the wall could come in contact with the plows and be thrown with the snow damaging cars, windows and or the plow itself.
2. Since the wall is directly abuts the curb it will most likely be damaged or destroyed when it comes time to replace the concrete curb.
3. I would be worried if a car tire jumping the curb in this section, which is only about 3 inches high, would be punctured if contact is made with the corners of the wall.

Michael



Michael W. Younes, PMP
Director of Municipal Operations
Chevy Chase Village
Main Office: (301) 654-7300
Direct Dial: (240) 762-5301
Cell: (240) 482-5443
Fax: (301) 907-9721
michael.younes@montgomerycountymd.gov
www.chevychasevillagemd.gov

53

ai

mm

CCV Permitting

From: Fitzgerald, John M.
Sent: Friday, May 29, 2015 4:40 PM
To: CCV Permitting
Cc: Davis-Cook, Shana
Subject: 5611 Kirkside

Ellen:

After seeing the recent walkway construction at 5611 Kirkside Drive, my reaction is as follows:

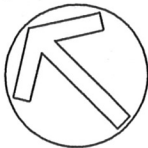
- The side walls extend above grade level to the curb edge and the stone slab on top of the bricks extends about two inches or so beyond the bricks and overhangs the curb slightly. This wall could present a trip hazard to someone walking in the right of way either on the grass or on the curb—especially when walking in the dark.
- The top slab has sharp corners and edges that, when combined with the very low curb height there, could easily result in a punctured tire side wall if a car were to roll onto the curb (during a parking maneuver, say) and scrape or bump the slab.

John

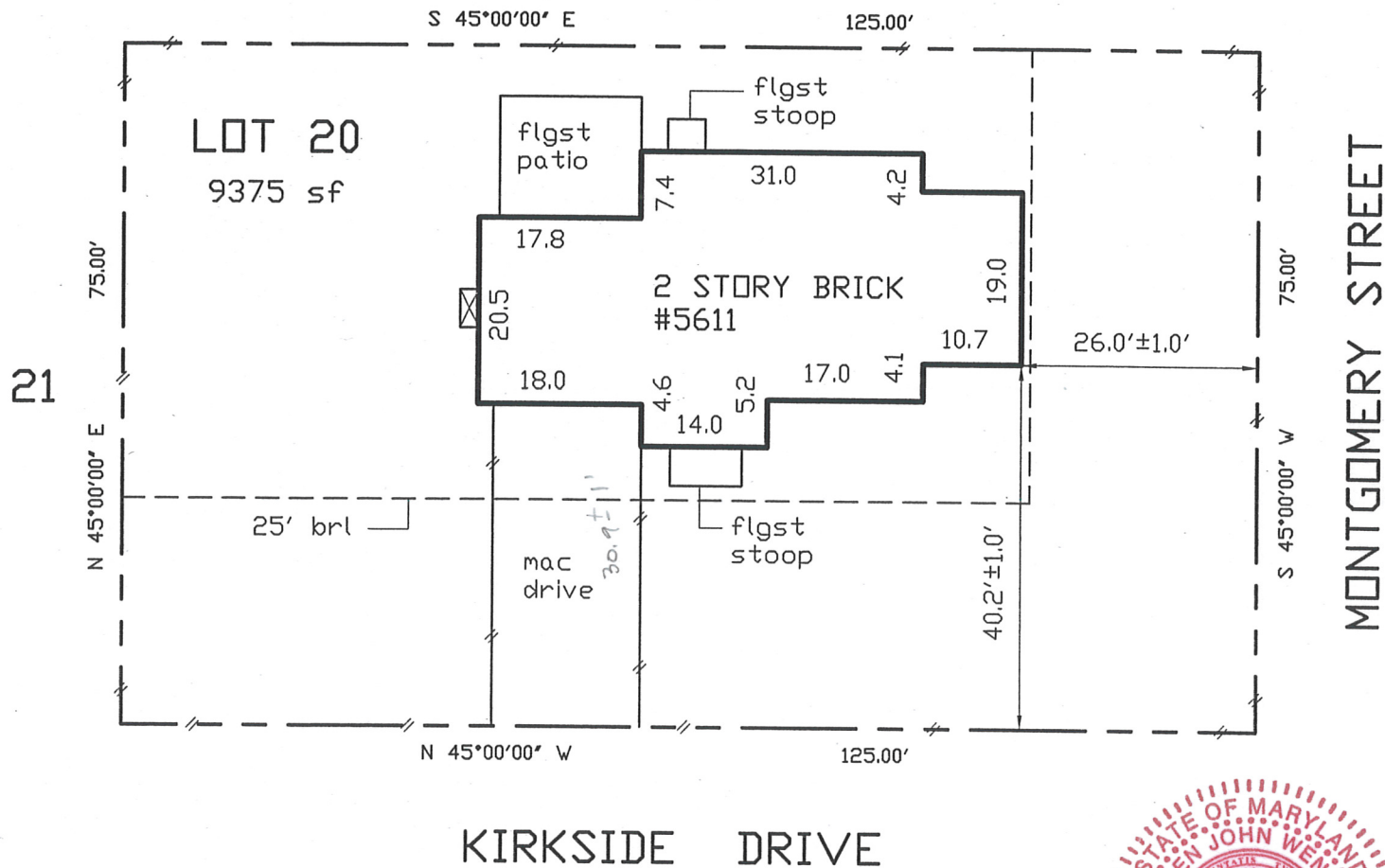
John Fitzgerald, Chief
Chevy Chase Village Police Department
5906 Connecticut Avenue
Chevy Chase, MD 20815
301-654-7300

54

22 previous



19



No evidence of property corners was found.
Apparent occupation is shown.

Date: 5-20-08 Scale: 1"= 20' Drn: R.C.D.
Plat Book: 18
Plat No.: 1132 NO TITLE REPORT FURNISHED
Work Order: 08-1660
Address: 5611 KIRKSIDE DRIVE
District: 7
Jurisdiction: MONTGOMERY COUNTY, MD

Surveyor's Certification

I hereby certify that the survey shown hereon is correct to the best of my knowledge and that, unless noted otherwise, it has been prepared utilizing description of record. This survey is not a boundary survey and the location or existence of property corners is neither guaranteed nor implied. Fence lines, if shown, are approximate in location. Building restriction lines shown are as per available information and are subject to the interpretation of the originator.

LOCATION DRAWING
LOT 20, BLOCK 13
SECTION 1-A, CHEVY CHASE

NOTE: This plat is of benefit to a consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or refinancing. This plat is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements. This plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or refinancing.



Meridian Surveys, Inc.
811 Russell Avenue
Suite #303
Gaithersburg, MD 20879
(301) 721-9400